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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

THE PEOPLE,

Plaintiff and Respondent,

v.

KEVIN ROBINSON,

Defendant and Appellant.

D052676

(Super. Ct. No. SCD208908)

APPEAL from a judgment of the Superior Court of San Diego County, Bernard E. Revak, Judge. Affirmed.

Kevin Robinson appeals his conviction of selling a substance in lieu of a controlled narcotic. He contends there was insufficient evidence to support his conviction because the testimonies of the eyewitnesses identifying him as the perpetrator were inherently improbable. We affirm the judgment.

FACTUAL AND PROCEDURAL BACKGROUND

On the evening of September 5, 2007, San Diego Police Detective Corinne Hard was working undercover acting as a narcotics purchaser in the 700 C Street corridor of downtown San Diego. A surveillance team monitored Detective Hard's movements from an unmarked car.

Detective Hard asked an individual, later identified as Marcus McGill, if he could help her acquire \$20 worth of cocaine. McGill agreed to help Detective Hard in exchange for a piece of the cocaine, and Detective Hard gave McGill a prerecorded \$20 bill.

Detective Hard proceeded down C Street with McGill, who asked approximately ten different individuals whether they had any cocaine. Detective Hard and McGill eventually made contact with two men standing on the corner of the 700 block of C Street. McGill showed one of the men, later identified as Kevin Robinson, the \$20 bill he had received from Detective Hard. Robinson, who was surrounded by four other individuals, nodded his head affirmatively.

At that moment, Robinson was approached by an unidentified man carrying a duffel bag. Detective Hard watched the man place about six pieces of what appeared to be rock cocaine in Robinson's hand. After Robinson conducted a hand-to-hand exchange with another unidentified man, McGill handed Robinson the \$20 bill he had received from Detective Hard. Robinson then gave McGill a piece of what was purported to be rock cocaine. McGill bit off a piece of the substance and handed the remainder to Detective Hard.

Once she received the substance from McGill, Detective Hard gave a designated arrest signal and provided her surveillance team with descriptions of McGill and Robinson. A scoop unit assigned to Detective Hard's team quickly apprehended Robinson. Detective Hard, who had been picked up by an unmarked police car, arrived on the scene and confirmed that the scoop unit had detained the person she saw sell cocaine to McGill.

Upon further inspection, Detective Hard determined that the substance she received from Robinson through McGill did not look exactly like rock cocaine. A subsequent test confirmed the substance was not cocaine.

An information charged Robinson with selling a substance in lieu of a controlled substance. A jury convicted Robinson of the charge. The court sentenced Robinson to prison for a total term of four years four months.

DISCUSSION

Robinson contends the jury's verdict was not supported by substantial evidence. More specifically, Robinson argues that, because he had neither drugs nor money when he was arrested, the testimonies of the witnesses identifying him as the perpetrator were inherently improbable.

In reviewing challenges to the sufficiency of the evidence, we review the whole record in the light most favorable to the judgment to determine whether substantial evidence supported it. (*People v. Hill* (1998) 17 Cal.4th 800, 848-849.) Our sole function is to determine if any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt (*People v. Bolin* (1998) 18 Cal.4th 297,

331; *People v. Marshall* (1997) 15 Cal.4th 1, 34), resolving all conflicts in the evidence and questions of credibility in favor of the verdict, and indulging every reasonable inference the jury could draw from the evidence (*People v. Autry* (1995) 37 Cal.App.4th 351, 358).

The testimony of even one witness constitutes substantial evidence, so long as that testimony is not inherently incredible. (*People v. Provencio* (1989) 210 Cal.App.3d 290, 306.) "Purported weaknesses in identification testimony of a single eyewitness are to be evaluated by the jury." (*People v. Elwood* (1988) 199 Cal.App.3d 1365, 1372.) We cannot reject the testimony of a witness the trier of fact chose to believe, unless the testimony is physically impossible or its falsity is plainly apparent. (*People v. Watts* (1999) 76 Cal.App.4th 1250, 1259.)

Here, both Detective Hard and a member of her surveillance team, Detective Esmeralda Tagaban, identified Robinson as the person who sold purported cocaine base to McGill. Robinson principally relies on the fact that he had no drugs or money at the time of his arrest to support his contention that these testimonies were inherently improbable. However, Officer Isabella Delgadillo, a member of the scoop unit assigned to Detective Hard's team, testified she did not always find drugs or money in the possession of individuals detained after engaging in drug transactions with undercover officers. Similarly, Detective Tagaban testified that suspects sometimes dispose of drugs or money upon sighting police vehicles. Even assuming the detectives observed Robinson from the moment of the transaction with McGill to the moment of his arrest, as Robinson asserts, both testified the transaction and subsequent arrest took place at night

and in dark surroundings. The jury could have reasonably inferred from the body of testimony that Robinson rid himself of any incriminating evidence without the officers noticing. (*People v. Autry, supra*, 37 Cal.App.4th at p. 358.)

In effect, Robinson asks that we reevaluate the credibility of the witnesses who identified him as the perpetrator. However, nothing in Detectives Hard and Tagaban's testimonies was physically impossible or inherently improbable. (*People v. Watts, supra*, 76 Cal.App.4th at p. 1259.) The jury implicitly believed the detectives' testimonies that Robinson was the individual who sold substitute cocaine base to McGill, notwithstanding the fact no drugs or money were found in Robinson's possession. These testimonies constituted substantial evidence supporting the jury's verdict, and we must defer to the jury's resolution of any credibility issues.

DISPOSITION

The judgment is affirmed.

McINTYRE, J.

WE CONCUR:

BENKE, Acting P. J.

AARON, J.